REMARKS

After entering the above amendments, claims 1, 3-5, 7-12 14, and 16-22 will be pending. Reconsideration and allowance of the current application are requested in light of the above-marked amendments and the foregoing remarks.

Summary of Rejections. The Office has rejected claims 1, 3-5, 7-12 14, and 16-20 under 35 U.S.C. §103(a) as allegedly being unpatentably obvious over U.S. Publication No. 2002/0099936 by Kou *et al.* (hereinafter "Kou") in view of U.S. Publication No. 2003/0061512 by Flurry *et al.* ("Flurry").

Summary of Amendments. With this amendment, claims 5 and 18 have been amended, and new claims 21 and 22 have been added to add additional limitations to the subject matter recited in claim 1. The amendment to claim 5 is merely to correct a grammatical error. Claim 18 has been amended to correct minor typographical errors and to affirmatively recite a client machine. New claims 21 and 22 find support in the original specification, at least a paragraphs [0033] and [0032], respectively. No new matter has been added with this amendment.

The subject matter of claims 21 and 22 is neither disclosed nor fairly suggested by any of the cited references in this matter, so these claims should be allowed even if the arguments presented below are not persuasive. No reference teaches or discloses generating the ESID at the client machine as recited in claim 21. The cookies of Kou and the aggregator token of Flurry are both originally generated by a server. Claim 22 recites providing two concurrent instances of a first and second session that is not possible with the cookies described in Kou because, as discussed in paragraph [0007] of the instant specification, a cookie provided by the client would be overwritten by the second session and therefore fail to provide a session return state for the first session.

Rejections under 35 USC §103

Claims 1, 3-5, 7-12 14, and 16-20 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentably obvious over Kou in view of Flurry. These rejections are respectfully traversed, because they do not comply with the standard set by the U.S. Supreme Court for a proper rejection under 35 U.S.C. §103(a) which requires determining the scope and contents of the prior art, ascertaining the differences between the prior art and the claimed subject matter, and resolving the level of ordinary skill in the pertinent art to determine if the differences would have been within this level of ordinary skill. *Graham v. John Deere*, 383 U.S. 1, 148 USPQ 459 (1966), reaffirmed in *KSR v. Teleflex*, 550 U.S. 398 (2007). As noted in MPEP §2141.02 and §2143.03, this analysis further requires consideration of whether the claimed subject matter as a whole would have been obvious to one of ordinary skill in the art at the time of invention. *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Schenck v. Nortron* Corp., 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983).

Contrary to the Office's assertion, Flurry does not teach storing a session return state at the application server after termination of an instance of the session. Also, the disclosures of Kou and Flurry directly and unequivocally teach away from each other, and as such are not properly combinable as asserted by the Office. Furthermore, the proffered modification of Kou based on the disclosure of Flurry would require an impermissible change in the principle of operation of these references, thereby further rendering the references incompatible and not properly combinable as the Office has erroneously asserted.

A.   Flurry does not teach storing a session return state at the application server after termination of an instance of the session.

The Office has acknowledged that Kou explicitly discloses that no session return state is stored at the application server after termination of the session upon receipt of the termination URL from the client. However, Applicants respectfully submit the Office has erred in alleging that Flurry cures this deficiency in Kou as discussed in greater detail below. Because the cited references fail to disclose or at least fairly suggest each specific and explicit limitation of the claimed subject matter, the Office can present a valid *prima facie* case for obviousness under 35 U.S.C. §103 only by presenting a convincing line of reasoning as to why one of ordinary skill in the art at the time of conception of the instantly claimed subject matter would have found the claimed invention to have been obvious in light of the teachings of the references. See *e.g.* MPEP §706.02(j) citing *Ex Parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985).

The Office has alleged that Flurry's paragraphs [0013], [0049], [0050], [0065] to [0068], [0074], [0076] to [0079] and [0085] disclose the limitations of clams 1, 12, and 18 pertaining to storing a session return state in a session memory on the application server, associating the session return state with an ESID, retaining the session return state and associated ESID until a request for a new instance that includes the ESID is received from the client machine, and restoring the session based on the session return state to duplicate an earlier terminated instance of the session. This assertion is wholly unsupported by the actual disclosure of Flurry. Flurry describes a single sign-on mechanism within an ASP aggregator service. In the Office Action of May 27, 2009, the Office cited paragraph [0068] in support of its assertion that Flurry teaches storing a session return state in the session memory of the application server after termination of the first instance of the session. However, contrary to the Office's assertion and in direct contradiction of the instantly claimed limitation, paragraph [0068] actually describes that the <u>client</u> stores the aggregator token between

sessions and forwards the aggregator token to a server with each request form the client to the aggregator service's infrastructure. Thus, Flurry's aggregator token is in reality nothing other than an authentication cookie similar to those discussed in Kou. Furthermore, Flurry makes no mention of the application server storing the aggregator token, or any other information that could properly be characterized as the instantly claimed session return state, after termination of an instance of the session. Likewise, none of paragraphs [0013], [0049] or [0050] of Flurry can be properly characterized as describing storing *in the session memory of an application server* a session return state that comprises a record of a user's activities in the application during a first instance. In short, Flurry simply does not disclose what the Office alleges it to disclose. There is no description or even a fair suggestion of storage in an application server session memory of a session return state that allows a second instance of a session to be restored upon receipt of an ESID from a client such that the second instance duplicates that state of the first instance at termination of a first instance.

Thus, at least because the cited prior art fails to teach all of the limitations of independent claims 1, 12, and 18 and because the Office has failed to provide the required convincing line of reasoning as to why one of ordinary skill in the art at the time of conception of the instantly claimed subject matter would have found the claimed invention obvious in light of the teachings of the references, the pending rejections under 35 U.S.C. §103(a) should be promptly withdrawn and the currently presented claims allowed.

B. The disclosures of Kou and Flurry are not properly combinable because they directly and unequivocally teach away from each other, and because the proffered combination would require an impermissible change in the principle of operation of the references.

Additionally, Kou is clearly not combinable with Flurry because the Kou disclosure teaches away from the instantly claimed subject matter. At stated at MPEP §2141.02, "a prior art reference

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must be considered in its entirety, i.e., as a whole, **including portions that would lead away from the claimed invention**. W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). Furthermore, even assuming *arguendo* that Flurry does actually describe or at least fairly suggest that the session memory of an application server stores a session return state of that allows restoration of a previously terminated instance of a session, the proffered combination of Kou with Flurry nonetheless fails to provide a proper *prima facie* basis for a rejection under 35 U.S.C. §103(a) because the proffered combination would require changing the principle of operation of the references. Such a combination is unequivocally not permissible per MPEP §2143.01: "if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious." *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).

Kou describes a system in which a cookie sent by a web browser on a client machine to a web server to initiate a web session is sent back to the web browser on the client machine upon the web browser logging off or navigating away from the web session. The cookie is stored at the client machine to be sent to the web server by the web browser upon initiation of a subsequent web session. However, as stated at the end of each of paragraphs [0074], [0075], and [0076] of Kou and explicitly acknowledged by the Office in the middle of page 3 of the currently pending Office Action, the cookies are erased or destroyed by the web server once the session ends because they are temporary cookies in direct contrast to the instantly claimed subject matter. This statement by Kou is not a mere omission of a claim limitation that is curable by reliance on an additional reference that allegedly discloses the omitted element, but rather provides a clear and unavoidable conflict with the instantly claimed subject matter that renders the Office's proffered rejection untenable under 35

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U.S.C. §103(a). Even if the Office is not persuaded by the above arguments regarding Flurry's failure to either teach or disclose the retention of session return state information after termination of a first instance of a session, the Office cannot properly rely on a combination of references that both directly teach away from the instantly claimed subject matter and that so clearly relies on requiring a substantial change in the principle of operation of one or both of the references.

For at least these reasons, the rejections should be withdrawn and the claims as shown above promptly allowed.

CONCLUSION

On the basis of the foregoing amendments, the pending claims are in condition for allowance. It is believed that all of the pending claims have been addressed in this paper. However, failure to address a specific rejection, issue or comment, does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above are not intended to be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper.

No fee is believed to be due, however the Commissioner is hereby authorized to charge any fees that may be due, or credit any overpayment of same, to Deposit Account No. 50-0311, Reference No. 34874-060/2003P00056US01. If there are any questions regarding this reply, the Examiner is encouraged to contact the undersigned at the telephone number provided below.

Respectfully submitted,

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